IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6285 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MONANAGAR CO-OP HOUG SOCIETY

Versus

KAMALABEN BHALABHAI DAVEE

Appearance:

MR PM BHATT for Petitioner

NOTICE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 25/02/2000

ORAL JUDGEMENT

The petitioner being Cooperative Housing Society filed Civil Suit No. 376 of 1981 before the Court of Board of Nominees at Ahmedabad in respect of money dealings and dues as outstanding from the respondent no.

1 on 12-1-1987. Nobody appeared on behalf of the petitioner before the Board of Nominees. In absence of the petitioner, the Board of Nominees dismissed the suit for default. It is pleaded that the advocates were on strike from December 1986 to 4-6-1987. The petitioner filed an appeal before the Guajrat State Cooperative Tribunal for setting aside the impugned order dismissing the suit in default. The appeal was also dismissed by the judgment dated 30-4-1988. The petitioner has filed this petition against the judgment and order dated 12-1-1987 dismissing the suit by the respondent no.2 and also against the impugned order dated 30-4-1988 by the respondent no. 3, on the ground that the advocates were on strike and hence no advocate appeared on behalf of the petitioner at the relevant time on 12-1-1987. It is also asserted that the petitioner was not informed about the date of hearing fixed. Hence, the petitioner Cooperative Society was not aware of the date to attend the Court. Thirdly, the dispute involved in the suit was referred to Shri Gautambhai Patel by the resolution of the petitioner Society on 29-9-1985 and the petitioner was not within the knowledge about the efforts for settlement to be made and the fruitful result.

2. It is well settle principle of law that the Courts should take liberal view in condoning delay and the matter should be disposed of on merits and not on technical ground of default.

3. Nobody is present on behalf of the petitioner when the matter is called out. However, I have gone through the petition and materials on record and found that the petitioner was not informed and aware of the date on which date the matter was to be taken up and the order of dismissal in default was passed. As the suit was dismissed in default ordinarily the Court should decide the matter on merits if the parties were not appearing due to any reason. But in the instant case, the suit was dismissed in default.

4. Considering the facts and circumstances of the case, I am of the view that an opportunity of hearing should be given to the petitioner. Hence, the impugned orders passed by the respondents no. 2 and 3 are liable to be quashed and set aside and the petitioner would be at liberty to file an application for restoration before the Board of Nominees within a period of six weeks from today and in case the petitioner files such application

the Board of Nominees, respondent no. 2 shall decide the said application within a period of three months thereafter in accordance with law.

5. Accordingly, this petition is allowed in part and the petitioner is at liberty to file an application for restoration of the suit with an application for condoning the delay if any before the Board of Nominees, Ahmedabad within a period of six weeks from today. In case, such application is moved by the petitioner within stipulated period of six weeks, the Board of Nominees, Ahmedabad respondent no. 2 is directed to decide the same in accordance with law within a period of three months thereafter. In case, the petitioner does not move such application for restoration before the respondent no.2, the operation of the order passed by the respondents no. 2 and 3 shall remain operative as it is. Rule is made absolute to the aforesaid extent, with no order as to costs. Interim relief, if any, stands vacated. As no one appeared on behalf of the petitioner, the petitioner be informed about this order.

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/JVSatwara/